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Frustration, Resignation and the

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WASHINGTON, Sept. 30 — After investigating Central Intelligence Agency abuses of recent decades, a Senate committee concluded in 1976 that "Congress has failed to provide the necessary statutory guidelines to insure that intelligence agencies carry out their missions in accord with constitutional process."

Four years later, after tortuous negotiation, Congress, the Carter Administration and such concerned on-lookers as the American Civil Liberties Union at last reached broad agreement on some guidelines. And a law was enacted that said the executive branch was obligated to keep the House and Senate intelligence committees "fully and currently informed of all intelligence activities" including any "significant anticipated" operations.

It appeared that a new era was dawning in which the spies of a major power would submit to legal oversight by the legislature.

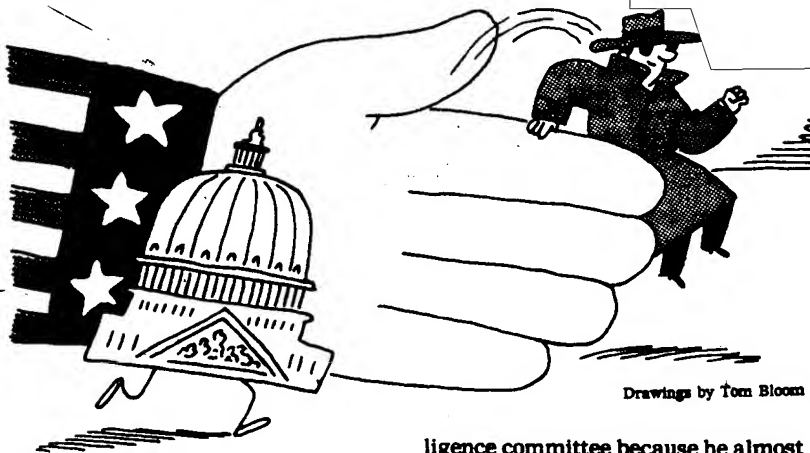
Muddled All Over Again

Today, however, the issue has become muddled all over again amid questions as to whether a member of the Reagan Administration's White House staff illegally rendered services to the anti-Sandinista rebels in Nicaragua, along with a contention by the Central Intelligence Agency that it merely "goofed" in not informing Congress about operations against Nicaragua. The primary question remains: Is Congress able, or willing, to exercise its rights to oversee intelligence?

When newspapers reported a few weeks ago that Lieut. Col. Oliver L. North, a member of the National Security Council staff, an arm of the White House, might have given advice on fund-raising and on military tactics to the Nicaraguan rebels, or contras, some members of Congress quickly promised vigorous inquiries.

Representative Lee H. Hamilton, Democrat of Indiana, who is chairman of the House intelligence committee, vowed a committee hearing, saying he could not see how the White House could "escape" a prohibition adopted by Congress in 1984 barring any United States aid that could help the rebels in trying to topple the Nicaraguan government.

Representative Michael D. Barnes of Maryland, chairman of the Western Hemisphere subcommittee of the Foreign Affairs Committee, demanded that the White House furnish all records of the Security Council staff member's work, contending that "it would be stretching the integrity"



Is this the new era of oversight on intelligence activities?

of the law to suggest that the work had been legally innocuous.

Mr. Barnes has not received his records, and Mr. Hamilton has been unable to convene his hearing. Instead, say other legislators and a number of Congressional staff experts, the resolve of the two Congressmen has been shattered by legal and political obstacles.

Shattered too, it appears, has been some of the earlier optimism on Capitol Hill about a new era of Congressional oversight of intelligence activities. One member of the House intelligence committee, Representative George E. Brown Jr., Democrat of California, says flatly that the Congressional role contemplated in the 1980 oversight law "is not working."

Mr. Hamilton has been unable to convene a formal hearing of the intel-

ligence committee because he almost certainly would be fended off by a claim of executive privilege from any Administration witnesses subpoenaed to testify. Complicating any other step he might take is the fact that his committee is deeply split on the Central American issue.

The best Mr. Hamilton has been able to do is persuade Robert C. McFarlane, the President's national security adviser and director of the National Security Council, to give the committee a closed, informal briefing in which Mr. McFarlane's remarks reportedly varied little from the wording of a letter he sent earlier. In that letter, he said he "would extend my assurance" that no activity of the Security Council had violated the prohibition on aid to the rebels.

Executive privilege is also almost certainly the reason Mr. Barnes did not get the records he requested, including data on Colonel North's travels and meetings with the rebels.

Mr. Hamilton seems both frustrated and resigned to this turn of events. "It was the testimony of the adviser to the President versus some stories in the press based on undisclosed sources," he said in retrospect. "It was a court with only one witness."

One Congressional expert said he believed that the Administration was so determined to support the rebels' cause that no language contrived by Congress would inhibit it. A test of this thesis will soon arise.

The 1984 aid prohibition expires to-

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day. But Congress has approved \$27 million in nonmilitary, "humanitarian" aid for the rebels, and the legislation putting up that money says the aid must not be channeled through the Central Intelligence Agency or the Department of Defense. Rather, a separate entity, the Nicaaguan Humanitarian Assistance Office, has been established in the State Department to administer the aid.

Mr. Brown says he believes that the new assistance office is merely "a facade" and that "the same people, whether they are technically still in the C.I.A. or not, will do the nitty-gritty." He added that the intelligence committee has the power to demand information on possible C.I.A. involvement, but that politics would make it impossible to exercise the power.

Although the committee has 10 Democrats and 6 Republicans, on any issue that threatens to jeopardize Administration wishes "the vote will be 8 to 8 or even 9 to 7 for the White House," Mr. Brown explained.

'A Very Exceptional Case'

While Mr. Brown says Congressional oversight of intelligence activities is not working, Mr. Hamilton counters that, by and large, oversight is working. But he says that "Nicaragua is a very exceptional case" because Congress is divided on "partisan lines" as to how much it should actually constrain the White House. Still, Mr. Hamilton says, "the Administration would be well advised not to push the law too far."

But how hard will Congress push back?

When it was learned last year that the Central Intelligence Agency had mined Nicaraguan harbors and produced a training manual suggesting the "neutralization" of some Sandinista supporters, the agency's Director, William J. Casey, testified in closed session. He might have argued that such acts were not "significant" and thus outside the wording of the oversight law. But he was not required to do so, according to Mr. Hamilton.

"He just said, 'we goofed,' that it was a mistake that they did not inform the committee," Mr. Hamilton added.